somewhat qualified, however, by the further statement: "The doctrine of estoppel in pais applies to municipal corporations, but the public will only be estopped, or not, as justice and right may require." The cases cited by the court in that case, however, are all cases of tort or contract liability on the part of the city, and the rule seems not to have been extended to restrict the proper exercise of its governmental functions. In *Philadelphia & Co.* v. *Omaha,* 65 Neb. 93, 90 N. W. 1005, 57 L. R. A. 150, it was said: "The authorities directly in point are few, and the question must be decided by principle and analogy. It is too important to be settled by mere dictum, and ought to be left open." This case had been argued first on the ground of estoppel of the city to collect some back taxes which its treasurer had erroneously marked "paid," which record was relied on by a third party in loaning money and obtaining title to the land. It was first held that the city was not estopped to assert its right, but upon the re-hearing it was decided that a statute sufficiently covered the case, so the principles of estoppel were held not to apply. Therefore, the first decision is now mere dictum, but HOLCOMB, J., gives a good review of the authorities supporting his decision, 63 Neb. 280. 93 Am. St. Rep. 442, 88 N. W. 523. Two cases practically in point on the facts, though not raising the question of estoppel, but affirming the power of the corporation to restrain further building operations in violation of their permit, and even requiring the removal of the building, are: *Brooklyn* v. *Furey,* 9 Misc. [N. Y.] 193, 30 N. Y. Supp. 349 and *O'Bryan* v. *Highland Apartment Co.,* 128 Ky. 282, 108 S. W. 257, 15 L. R. A. 419. In the principal case, stress is laid on the fact that the permit issued was not required by law, and its issuance was *ultra vires.* That such an act will not bind or estop the corporation is supported by the decisions in *Abell* v. *Prairie Civil T'w'p.,* 4 Ind. App. 599, 31 N. E. 477; *Fairtitle* v. *Gilbert,* 2 T. R. 169; *N. Y. Fire Dep't.* v. *Buffum,* 2 E. D. Smith 511; *Snyder* v. *City of Mt. Pulaski,* 176 Ill. 397, 52 N. E. 62, 44 L. R. A. 407.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE.—Plaintiff went to defendant company's station for the purpose of helping his daughter on the train. When the train came, plaintiff, who was carrying a baby, told the conductor that he wished to help his daughter on the train. The conductor replied, "All right." Before plaintiff had time to alight, the train started, and in attempting to get off the train, he was thrown by a sudden jerk onto the platform, breaking his shoulder. *Held,* that a person who attempts to alight from a slow-moving train is not guilty of contributory negligence as a matter of law, and may recover if his conduct is in accord with what an ordinarily prudent man would do under similar circumstances. *Chesapeake, etc. Ry. C.* v. *Dean* (Ky. 1914), 170 S. W. 167.

The doctrine established by the case above cited is sustained by one line of decisions in this country, on the theory that the act of a party in stepping off a moving train is to be judged by the same test as all other acts where negligence is claimed, i. e., whether it is what could be expected from an ordinarily prudent man under the same circumstances. *Carr* v. *Eel River, etc. R. R. Co.,* 98 Cal. 366; *Van Ostran* v. *N. Y. Cent. Ry. Co.,* 35 Hun. 590;

H. & T. C. Ry. Co. v. *Stewart,* 14 Tex. Civ. App. 703; *Stager* v. *Pass. Ry. Co.,* 119 Pa. St. 70; *Strand* v. *Chicago etc. Ry. Co.,* 64 Mich. 216. Another line of cases holds that to attempt to alight from a moving train is negligence per se, on the ground that it makes no difference whether a person gets off carefully or carelessly, the act of attempting to alight while the train is still in motion, is in itself such negligence as will preclude a recovery. *East Tennessee, etc. R. R. Co.* v. *Wassengill,* 83 Tenn. 336; *Gress* v. *R. R. Co.,* 109 Mo. App. 716; *Illinois Central R. R. Co.* v. *Cunningham,* 102 Ill. App. 266; *Walters* v. *Chicago etc. Ry. Co.,* 113 Wis. 367; *Boulfrois* v. *United Traction Co.,* 210 Pa. St. 263. The weight of authority is probably with the principal case in holding that "the question is always whether the act done is one which is consistent with prudence under all the circumstances." SHEARMAN & REDFIELD, NEGLIGENCE, § 520; 3 THOMPSON, NEGLIGENCE, § 3010.

NEGLIGENCE—EX-PARTNER LIABLE FOR INJURY TO INVITEE.—In 1885 defendant E. D. began a farm implement business and conducted it under his name until 1900, when his son became associated with him, the business being thereafter conducted under the name of "E. D. & Son." Defendant E. D. claims that in 1905 the partnership was dissolved by his withdrawal, and that since that time he has had no interest in the business except as a creditor and has taken no part in its management. With his consent, however, the use of the name "E. D. & Son" was continued, and advertisements were published in that name without protest by him. Plaintiff was injured by the negligence of one employed in the business, and sues both father and son, alleging that they invited him to enter the place of business and that he entered under such invitation. *Held,* that where there is "a holding out of a partnership relation concerning the control of a place where business is transacted, and an invitation to patronize is extended under such circumstances of publicity as to warrant the inference that a person * * * injured * * * must have had the right to believe that those extending the invitation were in control of the premises, liability results without regard to the existence of the partnership relation." *Jewison* v. *Dieudonne et al.,* (Minn. 1914) 149 N. W. 20.

The court does not base its decision upon the existence of the partnership relation and expressly holds that there was no partnership. The general rule in contracts, as to partnerships by estoppel, is that one who suffers his name to be used in a firm must answer to all who rely on that name. *In Re Krueger,* 2 Lowell 66; *Fletcher* v. *Pullen,* 70 Md. 205. Liability by "holding out" rests on the presumption that credit was given to a firm on the strength of the apparent partner's name. POLLOCK PARTNERSHIP (9th Ed.) 60. The rule in the earlier contract cases (that a person was liable as a partner if his name was left in the firm) was applied to an action in tort, in the case of *Stables* v. *Ely,* 1 C. & P. 614, where it was held that one who had ceased to be a partner, but allowed a cart to go out with his name on it, held himself out to the world as liable for the injuries occasioned by the driving of the cart. That case was overruled by a later case. *Smith* v. *Bailey,* (1891), 2 Q. B. 403, the court holding that the earlier decision could be explained only on the supposition that the case must have been misreported. Tort cases